

DWR

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FIRM ENERGY PURCHASE AGREEMENT

This FIRM ENERGY PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the date set forth below, by and between the Department of Water Resources with respect to its responsibilities pursuant to California Water Code Section 80000 *et seq.* regarding the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (the "Department"), an agency of the State of California, and Imperial Valley Resource Recovery Company, L.L.C. (the "Seller").

WITNESSETH:

WHEREAS, the Department solicited bids for energy pursuant to a Request for Bids ("RFB") published by the Department on February 2, 2001, and

WHEREAS, the Department has determined to accept a bid of the Seller made pursuant to the RFB; and

WHEREAS, the RFB provides that "[n]o binding commitment shall arise on the part of CDWR to any Bidder under this Request for Bids until and unless the parties sign documents of agreement that become effective in accordance with their terms."

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. The following terms shall have the respective meanings in this Agreement:

"Authorized Representative" shall mean the person or persons designated in Appendix B as having full authority to act on behalf of a party for all purposes hereof.

"Billing Address" means the billing address specified in Appendix B or as otherwise specified by the Department.

"Business Day" means any day other than a Saturday or Sunday or a (United States or Canadian, whichever is applicable) holiday. United States holidays shall be holidays observed by Federal Reserve member banks in New York City. Where the Seller has its principal place of business in the United States, Canadian holidays shall not apply. In situations where the Seller has its principal place of business within Canada, both United States and Canadian holidays shall be observed.

"Costs" shall have the meaning set forth in Section 6.03 hereof.

CONFIDENTIAL

"Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Delivery Point" means the California Independent System Operator's zone into which energy supplied by the Bidder will be delivered as described in Appendix A.

"Event of Default" shall have the meaning set forth in Section 6.01 hereof.

"Firm Energy" means the firm energy delivery and purchase set forth in Appendix A hereto.

"Fund" means the Department of Water Resources Electric Power Fund as set forth in Water Code Section 80000 *et seq.* as established by February 1, 2001, Assembly Bill 1, First Extraordinary Session.

"Guarantee Agreement" means an agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for specific obligations for transactions under this Agreement.

"Guarantor" means the entity providing a guarantee pursuant to a Guarantee Agreement.

"Invoice Month" means the calendar month after the delivery of Firm Energy for which an invoice is being issued.

"Investment Grade" means with respect to the Seller a rating on the Seller's senior long-term unsecured debt obligations of "BBB" from S&P and "Baa" from Moody's.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Department.

"Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than five (5) Reference Market-makers disregarding the highest and lowest quotations. If quotations cannot be obtained from five Reference Market-makers, the Market Quotation Price shall be the average of all quotations received.

"Market Value" shall have the meaning set forth in Section 6.03 hereof.

"Moody's" means Moody's Investor's Services, Inc., or its successor.

"Non-Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Per Unit Market Price" means the applicable price per MWh determined in accordance with Section 6.03.

"Present Value Rate" shall have the meaning set forth in Section 6.03 hereof.

"Purchase Price" means the price set forth in Appendix A.

"Reference Market-maker" means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated Investment Grade.

"Replacement Contract" means a contract having a term, transaction quantity, delivery rate, Delivery Point and product configuration substantially similar to the remaining Term, transaction quantity, delivery rate, Delivery Point and product configuration of this Agreement.

"Replacement Price" means the price at which Department, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Firm Energy not delivered by Seller hereunder, plus (i) costs reasonably incurred by Department in purchasing such substitute Firm Energy and (ii) additional transmission or other charges, if any, reasonably incurred by Department to the Delivery Point, or at Department's option, the market price at the Delivery Point for such Firm Energy not delivered as determined by Department in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Department be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For purposes of this definition, Department shall be considered to have purchased replacement Firm Energy to the extent Department shall have entered into one or more arrangements in a commercially reasonable manner whereby Department repurchases its obligation to sell and deliver the Firm Energy from another party at the Delivery Point.

"Sale Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Firm Energy not received by Department, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Firm Energy and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Firm Energy to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Firm Energy not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Department's liability. For purposes of this definition, Seller shall be considered to have resold such Firm Energy to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Firm Energy from another party at the Delivery Point.

CONFIDENTIAL

"S&P" means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.), or its successor.

"State" means the State of California.

"Term" shall have the meaning set forth in Section 2.04.

"Termination Payment" shall have the meaning set forth in Section 6.02 hereof.

"Uncontrollable Force" shall have the meaning set forth in Section 5.01 hereof.

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ARTICLE II PURCHASE AND SALE OF FIRM ENERGY

Section 2.01. Purchase and Sale of Firm Energy. Seller shall sell and deliver, or cause to be sold and delivered, and the Department shall purchase and receive, or cause to be purchased and received, the Firm Energy at the Delivery Point, and the Department shall pay the Seller the Purchase Price. The Seller shall be responsible for any costs or charges imposed on or associated with the Firm Energy up to the Delivery Point. The Department shall be responsible for any costs or charges imposed on or associated with the Firm Energy or its receipt at and from the Delivery Point.

Section 2.02. Transmission and Scheduling. The Seller shall arrange and be responsible for transmission service to the Delivery Point and shall schedule or arrange for scheduling services with its transmission providers, as specified by the Seller, or in the absence thereof, in accordance with the practice of the transmission providers, to deliver the Firm Energy to the Delivery Point. The Department shall arrange and be responsible for transmission service at and from the Delivery Point and shall schedule with its transmission providers to receive the Firm Energy at the Delivery Point. All deliveries shall be prescheduled subject to any conditions agreed to by schedulers. The Seller shall be responsible for ensuring that Firm Energy deliveries are scheduled as firm power consistent with the most recent rules adopted by the applicable NERC regional reliability council, or its successor. Risks of transmission curtailment or interruptions shall be the responsibility of the Seller up to the Delivery Point.

Section 2.03. Sources of Payment; No Debt of State. The Department's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of the Department arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or default or Event of Default under this Agreement, and any other payment obligation or liability of or judgement against the Department hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall

not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.

Section 2.04. Term. The term of this Agreement (the "Term") shall be set forth in Appendix A. This Agreement shall terminate upon expiration of the term specified in Appendix A.

ARTICLE III REPRESENTATIONS AND WARRANTIES

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Section 3.01. Representations and Warranties of the Department. The Department makes the following representations and warranties:

(a) Pursuant to Water Code Section 80000 *et seq.* the Department is authorized and empowered to enter into the transactions contemplated by this Agreement and has taken all requisite action to carry out its obligations hereunder. By proper action of its officers, the Department has duly authorized the execution and delivery of this Agreement.

(b) The execution, delivery and performance by the Department of this Agreement and the consummation by the Department of the transactions herein contemplated have been duly authorized and will not violate any provision of law in any material respect, or any order or judgment of any court or agency of government having jurisdiction thereover, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time) a material default under any material indenture, material agreement or other material instrument to which the Department is a party or by which it or any of its property is subject to or bound.

(c) Assuming due and proper execution hereof by the Seller, this Agreement constitutes the legal, valid and binding obligation of the Department enforceable against the Department in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

Section 3.02. Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller is a corporation or other such legal entity duly organized, validly existing and in good standing under the laws of the state in which it was formed or incorporated, is duly qualified to do business in and is in good standing under the laws of the State, is not in violation of any provision of its articles of incorporation or by-laws, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement. To the best of Seller's knowledge, the Seller is duly qualified to do business in every jurisdiction in which such qualification is necessary.

(b) The execution, delivery and performance of this Agreement and the consummation of the transactions by the Seller herein contemplated have been duly authorized by all material requisite action on the part of the Seller and will not violate any provision of law, any order or judgment of any court or agency of government, or the certificate of incorporation or by-laws of the Seller, or any material indenture, agreement or other instrument to which the Seller is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a material default under any such indenture, agreement or other instrument.

CONFIDENTIAL

(c) This Agreement constitutes the legal, valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) There is no substantive action or proceeding pending or, to the best knowledge of the Seller, threatened by or against the Seller by or before any court or administrative agency that might adversely affect the ability of the Seller to perform its obligations under this Agreement and all material authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Seller as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the Seller hereunder have been obtained.

(e) The Seller is solvent. No action has been instituted, with respect to the Seller, by the Seller or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or petition have been presented or instituted for its winding-up or liquidation.

ARTICLE IV PAYMENTS

Section 4.01. Billing Period; Billing Address. The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to the Department shall be sent to the Billing Address.

Section 4.02. Payments. The Department shall use its best efforts to ensure that payments for amounts billed hereunder shall be paid so that such payments are received by the Seller by the last Business Day of the Invoice Month or the 10th day after receipt of the bill, whichever is later. Payment shall be made at the location designated by the Seller to which payment is due. Payment shall be considered received when the Department mails payment. If the due date falls on a non-Business Day of either the Department or the Seller, then the payment shall be due on the next following Business Day.

Section 4.03 Late Payments. Amounts not paid on or before the due date shall be payable with interest accrued at the rate of one percent (1%) above the Pooled Money

Investment Account rate accrued in accordance with Government Code Section 927.6(6) not to exceed 15%.

Section 4.04 Disputes. In case any portion of any bill is in dispute, the entire bill shall be paid when due. Any excess amount of bills which, through inadvertent errors or as a result of a dispute, have been overpaid shall be returned by the Seller upon determination of the correct amount, with interest accrued at the rate provided in Section 4.03 hereof, prorated by days from the date of overpayment to the date of refund. Neither the Department nor the Seller shall have rights to dispute the accuracy of any bill or payment after a period of two (2) years from the date on which the first bill was delivered.

Section 4.05. Records Retention and Audit.

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(a) Records Retention. The Department and the Seller, or any third party representative thereof, shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of 3 years after final payment under this Agreement. Within three years from final payment under this Agreement, any party to any transaction may request in writing copies of the records of the other party to the extent reasonably necessary to verify the accuracy of any statement or charge. The party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

(b) Audit. Seller agrees that the Department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Seller agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Seller agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Seller agrees to include similar right of the State to audit records and interview staff in any contractors or suppliers related to performance of this Agreement.

**ARTICLE V
UNCONTROLLABLE FORCES**

Section 5.01. Uncontrollable Forces. No party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term " Uncontrollable Force " means any cause beyond the control of the party affected, including but not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority which by exercise of due diligence such party could not reasonably have been expected to avoid and to the extent which by exercise of due diligence it has been unable to overcome. No party shall, however, be relieved of liability for failure of performance to the

extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Any party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice. Notwithstanding the foregoing, an Uncontrollable Force shall not be based on (i) the loss of the Department's markets; (ii) the Department's inability economically to use or resell the Firm Energy purchased hereunder; (iii) the loss or failure of Seller's supply, including, but not limited to, Seller's own generating assets or contracts for the purchase of power or energy; or (iv) Seller's ability to sell the Firm Energy at a price greater than the Purchase Price.

The Department shall not be relieved by operation of this Section 5.01 of any liability to pay for power delivered to the Department by the Seller or to make payments then due or which the Department is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE VI EVENTS OF DEFAULT

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Section 6.01. Events of Default. An "Event of Default" shall mean with respect to a party ("Defaulting Party"):

- (a) The failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Defaulting Party by the other party (the "Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the Authorized Representative specified in Appendix B for the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative; or
- (b) The failure by the Defaulting Party to provide clear and good title as required by Section 10.01, to have made accurate representations and warranties as required by Sections 3.01 or 3.02 or to perform any other material covenant or obligation hereunder and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party. The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative; or
- (c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity, of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights, or a petition is presented or instituted for its winding-up or liquidation; or

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- (d) The failure by the Defaulting Party to provide adequate assurances of its ability to perform all of its outstanding material obligations to the Non-Defaulting Party under the Agreement pursuant to Section 7.01 of this Agreement, or
- (e) The Defaulting Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Defaulting Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Non-Defaulting Party.

Section 6.02. Remedies for Events of Default. (a) If an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate this Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be effective immediately upon receipt. The payment associated with termination ("Termination Payment") shall be the aggregate of the Market Value and Costs calculated in accordance with Section 6.03. Subject to the provisions of Section 6.02 (b) hereof, the Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for a termination hereunder. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

(b) Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting Party for any obligations incurred prior to termination under this Agreement until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party.

Section 6.03. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

(a) Market Value shall be (i) in the case the Department is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case the Seller is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting

Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

(b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, any or all of the settlement prices of the NYMEX power futures contracts, any or all of the settlement prices on other established power exchanges and other bona fide third party offers; provided, however, that if there is no actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (c).

(c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).

(d) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements pursuant to which the Non-Defaulting Party has hedged its obligations or entering into new arrangements which replace this Agreement, transmission and ancillary service costs caused by the termination of this Agreement incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the termination of this Agreement. The Non-Defaulting Party shall use reasonable efforts to mitigate or eliminate these Costs.

(e) In no event, however, shall a party's Market Value or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 8.01 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party within three (3) Business Days of receipt of written notice subject to the Non-Defaulting Party refunding, with interest, pursuant to Section 4.04, any amounts determined to have been overpaid.

ARTICLE VII CREDITWORTHINESS

Section 7.01. Creditworthiness. In the event that (a) the Seller or its Guarantor does not have long-term senior lien debt rated Investment Grade on the effective date of this Agreement, or (b) should Seller's creditworthiness, financial responsibility, or performance viability become unsatisfactory to the Department in the Department's reasonably exercised discretion, the Department may require the Seller to provide, at the Seller's option (but subject to the Department's acceptance based upon reasonably exercised discretion), either (i) the posting of a

Letter of Credit, (ii) a cash prepayment, (iii) the posting of other acceptable collateral or security by the Seller, (iv) a Guarantee Agreement executed by a creditworthy entity; or (v) some other mutually agreeable method of satisfying the Department. The Seller's obligations under this Section 7.01 shall be in an amount sufficient to cover (1) in case the remaining Term is less than one year, 100% of the Termination Payment, or (2) in case the remaining Term is one year or more, 25% of the Termination Payment, in each case calculated as if Article VI applied. Events which may trigger the Department questioning the Seller's creditworthiness, financial responsibility, or performance viability pursuant to clause (b) above include, but are not limited to, the following:

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- (A) The Department has knowledge that the Seller (or its Guarantor, if applicable) is failing to perform or defaulting under other contracts.
- (B) The Seller or its Guarantor has long-term senior lien debt which is rated as Investment Grade and that debt falls below the Investment Grade rating by S&P or Moody's or is below Investment Grade and the rating of that debt is downgraded further by S&P or Moody's.
- (C) Other substantial adverse changes in the Seller's financial condition occur.
- (D) Substantial changes in market prices or other events occur which, in the sole judgment of the Department, materially and adversely impact the Seller's ability to perform under this Agreement.

If the Seller fails to provide such reasonably satisfactory assurances of its ability to perform a transaction hereunder within three (3) Business Days of demand therefor, that will be considered an Event of Default under Section 6.01 of this Agreement and the Department shall have the right to exercise any of the remedies provided for under Article VI. Nothing contained in this Section 7.01 shall affect any credit agreement or arrangement, if any, between the parties.

ARTICLE VIII DISPUTE RESOLUTION

Section 8.01. Dispute Resolution. If the parties are unable to resolve a dispute with respect to this Agreement, either party may send a notice to the other requesting a meeting at which senior officers or officials of the parties will attempt to resolve the dispute. If the parties are unable to resolve the dispute within ten (10) days after the meeting notice is received by the party to whom it is directed, either party may demand that the matter be submitted to a single neutral arbitrator with substantial relevant experience in the power industry. If the parties are unable to agree upon an arbitrator within ten (10) days of the demand, the arbitrator shall be appointed pursuant to California Code of Civil Procedure and the party applying for the appointment of the arbitrator shall request that the appointment be made on an expedited basis. Within ten (10) days of the appointment of the arbitrator, the party demanding arbitration shall submit to the arbitrator a reasonably detailed description of its position together with supporting material. Within a further ten (10) days, the other party shall respond by submitting to the

arbitrator a reasonably detailed statement of its position together with supporting material. Each party shall at the same time as such submission deliver copies of its submission to the other party and shall promptly provide any additional explanation or information requested by the arbitrator. The arbitrator shall be instructed to use all reasonable efforts to render a written decision setting forth its findings and conclusions within thirty (30) days of the date on which the arbitration proceedings are concluded. The arbitrator's decision concerning the item or items in dispute shall be final and binding on the parties. The parties shall bear their own costs and share the arbitrator's expenses equally.

ARTICLE IX REMEDIES FOR FAILURE TO DELIVER/RECEIVE

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Section 9.01. Seller Failure. If Seller fails to schedule and/or deliver all or part of the Firm Energy, and such failure is not excused under the terms of this Agreement or by Department's failure to perform, then Seller shall pay Department, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Purchase Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

Section 9.02. Department Failure. If Department fails to schedule and /or receive all or part of the Firm Energy and such failure is not excused under the terms of this Agreement or by Seller's failure to perform, then Department shall pay Seller, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Purchase Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE X MISCELLANEOUS

Section 10.01. Title, Risk of Loss. The Seller warrants that it will transfer to the Department good title to the Firm Energy sold under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Point and that Seller's sale is in compliance with all applicable laws and regulations. **THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Risk of loss of the Firm Energy shall pass from the Seller to the Department at the Delivery Point(s); provided, however, with regard to federal agencies or parts of the United States Government, title to and risk of loss shall pass to Department to the extent permitted by and consistent with applicable law.

Section 10.02. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State, without regard to the conflicts of laws rules thereof. The foregoing notwithstanding, if the Seller is an agency of or part of the United States Government, then the laws of the United States of America shall govern.

Section 10.03. Forum and Venue. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the County of Sacramento, State of California.

Section 10.04. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any matters whatsoever arising out of or in any way connected with this Agreement. The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 10.05. Amendment. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Department and the Seller.

Section 10.06. Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by the parties, each executed counterpart shall have the same force and effect as an original instrument and as if the parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 10.07. Taxes. The Purchase Price shall include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Department for if the Department has paid, all taxes applicable to the Firm Energy that arise prior to the Delivery Point. If the Department is required to remit such tax, the amount shall be deducted from any sums due to the Seller. The Purchase Price does not include reimbursement for, and the Department is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to the Firm Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Department. Either Party, upon written request of the other party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority with respect to the Firm Energy.

Section 10.08. Transfer of Interest in Agreement. No party shall voluntarily assign or transfer this Agreement or any portion thereof without the written consent and approval of the other party. Any successor or assignee of the rights of any party, whether by voluntary transfer, judicial or foreclosure sale or otherwise, shall be subject to all the provisions and conditions of this Agreement to the same extent as though such successor or assignee were the original party under this Agreement, and no assignment or transfer of any rights under this Agreement shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of this Agreement. The execution of a mortgage or trust deed or a judicial or foreclosure sale

made thereunder shall not be deemed a voluntary transfer within the meaning of this Section 10.08.

Anything herein to the contrary notwithstanding, the Department may transfer and assign this Agreement to any entity created or designated by law for such purpose and the Department shall have no further obligations hereunder; provided, however, that all right, title and interest in the Fund shall be transferred to such entity without any encumbrance for the benefit of all persons selling power or energy to the Department, including the Seller.

Section 10.09. Severability. In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement.

Section 10.10. Relationship of the Parties. (a) Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the parties. Each party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

(b) All rights of the parties are several, not joint. No party shall be under the control of or shall be deemed to control another party. Except as expressly provided in this Agreement, no party shall have a right or power to bind another party without its express written consent.

Section 10.11. No Dedication of Facilities. The Seller's undertaking hereunder shall not constitute the dedication of the electric system or any portion thereof of the Seller to the public or to the other party and it is understood and agreed that any undertaking under this Agreement by the Seller shall cease upon the termination of the Seller's obligations under this Agreement.

Section 10.12. No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate the Seller to provide any services hereunder directly to or for retail customers of any person.

(b) In performing their respective obligations hereunder, neither party is acting, or is authorized to act, as agent of the other party.

Section 10.13. Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 10.08.

Section 10.14. Liability and Damages. No party or its directors, members of its governing bodies, officers or employees shall be liable to any other party or parties for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect,

or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder. Any liability or damages faced by an officer or employee of a Federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with Federal law.

Section 10.15. Waivers. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

Section 10.16. Notices. Any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram or fax or other means agreed to by the parties to the addresses set forth in Appendix B.

Section 10.17. Waiver of Consequential Damages: In no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a party's own negligence) or otherwise, shall either party be liable to the other party or to any other person or party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise; provided, however, that this provision shall not limit in any way a party's right to payment of the Termination Payment pursuant to Section 6.02 hereof or payments pursuant to Section 9.01 hereof.

Section 10.18. Standard Contract Provisions. The Standard Contract provisions attached as Exhibit A shall apply to this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the 13th day of MARCH, 2001.

DEPARTMENT OF WATER RESOURCES

"California Department of Water Resources, acting solely under the authority and powers created by ABX-1, codified as Sections 80000 through 80260 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System" or "Party B".

By: 

Name: THOMAS M. HANNIGAN
Title: DIRECTOR

CONFIDENTIAL

IMPERIAL VALLEY RESOURCE RECOVERY
COMPANY, L.L.C.

By: Rog Still

Name: Roger Silverthorn
Title: President

CONFIDENTIAL

Firm Energy

Product: Base Load, All Day, Every Day – Hours Ending 01-24 (7 x 24).

Purchase Price: \$100 MWh for 2001, \$95 MWh for 2002, \$90 MWh for 2003.

Initial Date of Delivery and Term: June 1, 2001.

Delivery Rate: 16 MW.

Delivery Point: SP15.

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Addresses

Billing Address: Primary Power International
3170 E. Tittabawassee
Hemlock, Michigan 48626
Attn: Lori Lamont
Fax: (517) 642-3018

With a copy to:
Primary Power Marketing, L.L.C.
16743 Eunice
East Lansing, Michigan 48823
Attn: Rolf Peterson
Fax: (517) 339-6744

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Notice Address: Primary Power International
168 East Center Street
Ithaca, Michigan 48847
Attn: Roger Silverthorn
Fax: (517) 875-3906

With a copy to:
Ufer & Spaniola, P.C.
39577 Woodward Avenue
Suite 210
Bloomfield Hills, Michigan 48304
Attn: Anthony M. Spaniola, Esquire
Fax: (248) 540-0884

Authorized Representative: Roger Silverthorn
Chris Pollard - Alternate

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APPENDIX C
TO STANDARD FIRM ENERGY PURCHASE AGREEMENT

This Appendix C is incorporated into the Standard Firm Energy Purchase Agreement (the "Purchase Agreement") between the Department of Water Resources with respect to its responsibilities pursuant to California Water Code Section 80000 *et seq.* regarding the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (the "Department"), an agency of the State of California, and Imperial Valley Resource Recovery Company, L.L.C., a Delaware limited liability company ("Seller").

1. Amendment To Section 2.01. Section 2.01 of the Purchase Agreement is hereby amended by adding thereto the following as the last sentence thereof: "Seller may, in its sole discretion, procure electrical energy from sources other than its electrical power production facility located near El Centro, California (the "Facility") in order to perform its obligations to sell and deliver Firm Energy as set forth in this Section 2.01."

2. Amendment To Section 2.02. Section 2.02 of the Purchase Agreement is hereby amended by adding thereto the following as the last sentence thereof: "Notwithstanding the foregoing sentence, Seller shall not be liable or responsible for transmission curtailments or interruptions up to the Delivery Point as a result of or arising out of: (i) an Uncontrollable Force; (ii) conditions on or with respect to the transmission system of the Seller's transmission provider, the Imperial Irrigation District or its successors, which result in a curtailment or interruption of transmission service to Seller, including without limitation curtailments or interruptions arising from repairs to, and/or maintenance of, the transmission system, or from reductions in the transmission system's normal transmission capacity; or (iii) an instruction or order of any governmental agency or Cal ISO (or any successor thereto) having jurisdiction over such transmission lines."

3. New Section 2.05. The Purchase Agreement is hereby amended by adding thereto the following Section 2.05:

2.05 Maintenance Outages. During each calendar year, Seller shall have the right to conduct up to four (4) maintenance outages (each a "Maintenance Outage") of its Facility which Maintenance Outages may last for an aggregate period of up to fifteen (15) days per calendar year. Notwithstanding anything to the contrary in this Agreement, Seller shall have no obligation during any Maintenance Outage to sell and deliver, or cause to be sold and delivered, any Firm Energy under this Agreement. Seller shall provide Department with fourteen (14) days prior written notice of a Maintenance Outage and will use its reasonable best efforts to coordinate with the Department the scheduling of a Maintenance Outage at a non-peak time.

4. Amendment To Section 3.02(d). Section 3.02(d) of the Purchase Agreement is hereby amended by adding immediately before the period of the last sentence the following: "or will be obtained prior to the time of Seller's performance hereunder."

5. Amendment to Section 4.05(b). Section 4.05(b) of the Purchase Agreement is hereby amended by deleting the last sentence thereto in its entirety.

6. Amendment To Section 5.01. Section 5.01 of the Purchase Agreement is hereby amended by (a) inserting immediately after the word "supply" located in clause (iii) of Section 5.01 the following: "of fuel for the Facility"; and (b) deleting from clause (iii) of Section 5.01 the following: "including, but not limited to, Seller's own generating assets or contracts for the purchase of power or energy."

7. Amendment To Section 6.01. Section 6.01 of the Purchase Agreement is hereby amended as follows:

A. Subsection (b) to Section 6.01 is hereby amended by (a) inserting immediately before the words "to provide" located in the first sentence thereof, the following: "to deliver or receive (or cause to be delivered or received), as applicable, Firm Energy at the Delivery Point," and (b) deleting the words "five (5)" and replacing them with "ten (10)."

B. Subsection (c) to Section 6.01 is hereby amended by adding after the word "entity" the following: "(which in an involuntary action is not discharged within sixty (60) days of filing)".

8. Amendment to Section 6.03. Section 6.03 of the Purchase Agreement is hereby amended by deleting the last sentence of the last paragraph of Section 6.03 and replacing it with the following: The Defaulting Party shall pay the full amount of the Termination Payment no later than 180 days following the termination date. Without limiting any other provisions of this Agreement, the payment and rate covenants of the Department set forth herein shall remain in full force and effect until payment of the Termination Payment.

9. Amendment To Section 7.01. Section 7.01 of the Purchase Agreement is hereby amended as follows:

A. Subsection C to Section 7.01 is hereby amended by inserting immediately after the word "occur" the following: "which materially and adversely impact the Seller's ability to perform its obligations under this Agreement."

B. Subsection D to Section 7.01 is hereby amended by deleting the word "sole" and replacing it with the "reasonable".

C. The last paragraph of Section 7.01 is hereby amended by deleting the words "three (3)" and replacing them with "five (5)".

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10. Amendment To Sections 9.01 And 9.02. Sections 9.01 and 9.02 of the Purchase Agreement are hereby amended by deleting the words "within five (5) Business Days of invoice receipt" and replacing them with "by the last Business Day of the month in which such invoice is sent or the 10th day after receipt of such invoice, whichever is later".

11. Amendment To Section 10.08. Section 10.08 of the Purchase Agreement is hereby amended as follows:

A. The first sentence of Section 10.08 is hereby amended by inserting immediately after the words "other party" the following: "which consent and approval shall not be unreasonably withheld or delayed".

B. The second sentence of Section 10.08 is hereby amended by: (i) deleting the phrase "to the same extent as though such successor or assignee were the original party under this Agreement"; (ii) inserting immediately after the words "assignment or transfer" the following: "(except an assignment of all or any interest in this Agreement to a financing institution or other entity to facilitate financing for the Facility by Seller)"; and (iii) inserting immediately after the word "transferor" the following: "occurring or arising after the date of such transfer or assignment; provided however, the obligations of the assigning party occurring prior to the assignment shall survive the assignment".

C. The last sentence of the first paragraph of Section 10.08 is hereby amended by inserting after the word "deed" the following: ", assignment of all or any interest in this Agreement to a financing institution to facilitate financing for the Facility by Seller".

12. Amendment To Section 10.17. Section 10.17 of the Purchase Agreement is hereby amended by deleting the words "Section 9.01" and replacing them with "Article IX".

13. Addition of New Section 10.19. The Purchase Agreement is hereby amended by adding a new Section 10.19 to read in its entirety as follows:

10.18 No Cross Defaults. The Purchase Agreement shall be treated as a stand-alone transaction and shall not be cross defaulted to any other transaction between the Department and the Seller, and no default under any transaction of the Department relating to the Department's Water Resources Development System shall be a default under this Agreement, and no default by any party under this Agreement shall be a default under any transaction of the Department relating to the Department's Water Resources Development System.

14. Addition of New Section 10.20. The Purchase Agreement is hereby amended by adding a new Section 10.20 to read in its entirety as follows:

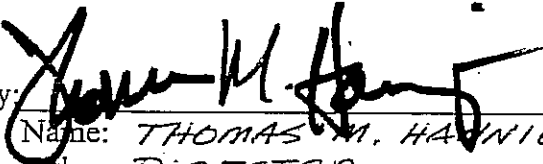
10.20 Nonapplicability Of Certain Provisions Of Exhibit A. Seller has indicated that, because of the administrative burden and

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delays associated with such requirements, it would not enter into this Agreement if the provisions of paragraphs 9, 11 and 19 were applicable to the Agreement. Accordingly, pursuant to Section 80014 of the Water Code, the Department has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

Executed as of the date of the Purchase Agreement

DEPARTMENT OF WATER RESOURCES,
acting solely under the authority and powers created
by AB1X, codified as Sections 80000 through
80260 of the Water Code and not under its powers
and responsibilities with respect to the State Water
Resources Development System

By: 
Name: THOMAS M. HANIGAN
Title: DIRECTOR

By: _____
Name: _____
Title: _____

IMPERIAL VALLEY RESOURCE RECOVERY
COMPANY, L.L.C., a Delaware limited liability
company

By: _____
Name: _____
Title: _____

delays associated with such requirements, it would not enter into this Agreement if the provisions of paragraphs 9, 11 and 19 were applicable to the Agreement. Accordingly, pursuant to Section 80014 of the Water Code, the Department has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

Executed as of the date of the Purchase Agreement

DEPARTMENT OF WATER RESOURCES,
acting solely under the authority and powers created
by AB1X, codified as Sections 80000 through
80260 of the Water Code and not under its powers
and responsibilities with respect to the State Water
Resources Development System

CONFIDENTIAL

By: _____
Name:
Title:

By: _____
Name:
Title:

IMPERIAL VALLEY RESOURCE RECOVERY
COMPANY, L.L.C., a Delaware limited liability
company

By: Roger Silverthorn
Name: Roger Silverthorn
Title: President

60466/ATF/031201/6

Exhibit "A"

CONFIDENTIAL

CCC800 CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>	<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County of</i>

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:


- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Exhibit "A"

CONFIDENTIAL

CCC800 CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

{PRIVATE} Contractor/Bidder Firm Name (Printed) Imperial Valley Resource Recovery Company, L.L.C.		Federal ID Number
By (Authorized Signature) 		
Printed Name and Title of Person Signing Roger Silverthorn		
Date Executed March 12, 2001	Executed in the County of Gratiot, MI	

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC-10296) (Not applicable to public entities.)

DOING BUSINESS WITH THE STATE OF CALIFORNIA

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Contractor agrees to comply with all applicable laws and all applicable orders and regulations of regulatory authorities having jurisdiction over matters covered by this Agreement. Without limiting the foregoing, Contractor shall comply with the following:

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste

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discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other government entity.

9. APPROVAL: This Agreement is of no force or effect until signed by both parties. Contractor may not commence performance until Agreement is signed by Department.

10. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

11. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

12. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

13. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

14. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing

Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

15. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in California Department of General Services Standard Form CCC800 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

16. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

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d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

17. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with, that:

a). the contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) the contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

18. IMPERMISSIBLE CONTRACTOR ACTIVITIES WITH REGARD TO UNION ACTIVITIES: The Contractor, by signing this Agreement, certifies that it is aware of its requirements under Government Code Sections 16645 – 16649 which, among other things, precludes certain activities and provides civil penalties with regard to assisting, promoting or deterring union organizing.

19. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until any such approval has been obtained.

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GUARANTY AGREEMENT

from

Primary Power Management and Development, Inc.
d/b/a Primary Power International

to

CONFIDENTIAL

State of California
Department of Water Resources,
Separate and apart from its powers and responsibilities with respect to the State Water
Resources Development System

Dated

3/13, 2001

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.....	2
SECTION 1.2. INTERPRETATION.....	2
(A) References Hereto.....	2
(B) Gender and Plurality.....	2
(C) Persons.....	2
(D) Headings.....	2
(E) Entire Agreement; Authority.....	2
(F) Counterparts.....	2
(G) Applicable Law.....	2
(H) Severability.....	2
(I) Approvals.....	3
(J) Payments.....	3

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR.....	4
(A) Existence and Powers.....	4
(B) Due Authorization and Binding Obligation.....	4
(C) No Conflict.....	4
(D) No Governmental Approval Required.....	4
(E) No Litigation.....	4
(F) No Legal Prohibition.....	4
(G) Consent to Agreements.....	4
(H) Consideration.....	5

ARTICLE III

GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO DWR.....	6
SECTION 3.2. RIGHT OF DWR TO PROCEED AGAINST GUARANTOR.....	6
SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL.....	6
SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS.....	8
SECTION 3.5. WAIVERS BY THE GUARANTOR.....	8
SECTION 3.6. PAYMENT OF COSTS AND EXPENSES.....	9
SECTION 3.7. SUBORDINATION OF RIGHTS.....	9
SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT.....	9
SECTION 3.9. TERM.....	9

ARTICLE IV

GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE.....	10
(A) Consolidation, Merger, Sale or Transfer	10
(B) Continuance of Obligations	10
SECTION 4.2. ASSIGNMENT	10
SECTION 4.3. QUALIFICATION IN CALIFORNIA	10
SECTION 4.4. CONSENT TO JURISDICTION	10
SECTION 4.5. BINDING EFFECT	10
SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS	10
SECTION 4.7. LIABILITY	11
SECTION 4.8. NOTICES	11

CONFIDENTIAL

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of 3/13, 2001 between Primary Power Management and Development, Inc., d/b/a/ Primary Power International, a corporation organized and existing under the laws of the State of Michigan (together with any permitted successors and assigns hereunder (the "Guarantor")), and the State of California Department of Water Resources, separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("DWR").

RECITALS

DWR and Imperial Valley Resource Recovery Company, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware (the "Company"), have entered into a Standard Firm Energy Purchase Agreement, dated 3/13/, 2001 (the "Power Purchase Agreement"), whereby the Company has agreed to sell and DWR has agreed to purchase energy on the terms and conditions set forth therein.

The Company is a subsidiary of the Guarantor.

DWR will enter into the Power Purchase Agreement only if the Guarantor guarantees the performance by the Company of all of the Company's responsibilities and obligations under the Power Purchase Agreement as set forth in this Guaranty Agreement (the "Guaranty").

In order to induce the execution and delivery of the Power Purchase Agreement by DWR and in consideration thereof, the Guarantor agrees as follows:

CONFIDENTIAL

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. For the purposes of this Guaranty, the term "Obligations" means the amounts payable by, and the covenants and agreements of the Company pursuant to the terms of the Power Purchase Agreement; and "Energy" means the energy delivered to the Delivery Point by the Company pursuant to the Power Purchase Agreement. Any other capitalized word or term used but not defined herein is used as defined in the Power Purchase Agreement.

SECTION 1.2. INTERPRETATION. In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms "hereby", "hereof", "herein", "hereunder" and any similar terms refer to this Guaranty, and the term "hereafter" means after, and the term "heretofore" means before, the date of execution and delivery of this Guaranty.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement; Authority. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, DWR and their permitted successors and assigns hereunder, any rights or remedies under or by reason of this Guaranty.

(F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of California.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

CONFIDENTIAL

Primary Power Guaranty Agreement Version 4 3/9/01

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall not be unreasonably withheld or delayed.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

CONFIDENTIAL

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR.

The Guarantor hereby represents and warrants that:

(A) Existence and Powers. The Guarantor is a duly registered corporation organized and validly existing under the laws of the State of Michigan, with full legal right, power and authority to enter into and perform its obligations under this Guaranty.

(B) Due Authorization and Binding Obligation. The Guarantor has duly authorized the execution and delivery of this Guaranty, and this Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium or by general equity principles of reorganization and other similar laws affecting creditors' rights generally and general principles of equity.

(C) No Conflict. Neither the execution or delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations hereunder (1) to the Guarantor's knowledge conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor, (2) conflicts with, violates or results in a material breach of any term or condition of the Guarantor's corporate charter or by-laws or any judgment, decree, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (3) to the Guarantor's knowledge will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby.

(D) No Governmental Approval Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required of the Guarantor for the valid execution and delivery by the Guarantor of this Guaranty, except such as shall have been duly obtained or made.

(E) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the Guarantor's knowledge, threatened against the Guarantor which has a likelihood of an unfavorable decision, ruling or finding that would materially and adversely affect the validity or enforceability of this Guaranty.

(F) No Legal Prohibition. The Guarantor has no knowledge of any Applicable law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

(G) Consent to Agreements. The Guarantor is fully aware of the terms and conditions of the Power Purchase Agreement.

CONFIDENTIAL

Primary Power Guaranty Agreement Version 4 3/9/01

(H) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

CONFIDENTIAL

ARTICLE III

GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO DWR. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to DWR, for the benefit of DWR (1) the full and prompt payment, when due, of each and all of the payments required to be credited or made by the Company under the Power Purchase Agreement (including all amendments and supplements thereto) to, or for the account of, DWR, when the same shall become due and payable pursuant to this Guaranty, and (2) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Guaranty.

SECTION 3.2. RIGHT OF DWR TO PROCEED AGAINST GUARANTOR. This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Company to pay or perform any Obligation guaranteed hereunder, after the expiration of any applicable grace or cure period, DWR shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Company or exhausting any other remedies against the Company which DWR may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that DWR (1) file suit or proceed to obtain a personal judgment against the Company or any other person that may be liable for the Obligations or any part of the Obligations, (2) make any other effort to obtain payment or performance of the Obligations from the Company other than providing the Company with any notice of such payment or performance (and expiration of any applicable cure period) as may be required by the terms of the Power Purchase Agreement or required to be given to the Company under Applicable law, (3) foreclose against or seek to realize upon any security for the Obligations, or (4) exercise any other right or remedy to which DWR is or may be entitled in connection with the Obligations or any security therefor or any other guaranty thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Company or to the enforcement of remedies under the Power Purchase Agreement. Upon any unexcused failure by the Company in the payment or performance of any Obligation, after the expiration of any applicable grace or cure period, and the giving of such notice or demand, if any, to the Company and Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding DWR's right to proceed directly against the Guarantor, DWR (or any successor) shall not be entitled to more than a single full performance of the obligations in regard to any breach or non-performance thereof.

SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Company shall have fully discharged the Obligations in accordance with their respective terms, and, except as provided in Section 3.4 hereof, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Company, DWR or any other person. Without limiting the foregoing and except as set forth in Section 3.4 hereof, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by or further consent of the Guarantor):

Primary Power Guaranty Agreement Version 4 3/9/01

CONFIDENTIAL

- (1) the extension or renewal of this Guaranty or the Purchase Power Agreement;
- (2) any exercise or failure, omission or delay by DWR in the exercise of any right, power or remedy conferred on DWR with respect to this Guaranty or the Power Purchase Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense, or other defense which may be asserted by the Company, with respect to a specific claim;
- (3) any permitted transfer or assignment of rights or obligations under this Guaranty or the Power Purchase Agreement by any party thereto;
- (4) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of the Power Purchase Agreement;
- (5) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Company, or any of its property, or any allegation or contest of the validity of this Guaranty or the Power Purchase Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);
- (6) except as permitted by Sections 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any affiliate of any of the capital stock or other interest of the Guarantor or any affiliate in the Company now or hereafter owned, directly or indirectly, by the Guarantor or any affiliate, or any change in composition of the interests in the Company;
- (7) any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;
- (8) the failure on the part of DWR to provide any notice to the Guarantor which is required to be given to the Guarantor pursuant to this Guaranty and to the Company as a condition to the enforcement of Obligations pursuant to the Power Purchase Agreement;
- (9) except as permitted by Section 4.1 or 4.2 hereof, the merger or consolidation of the Guarantor or the Company into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;
- (10) any legal disability or incapacity of any party to this Guaranty or the Power Purchase Agreement; or

(11) the fact that entering into the Power Purchase Agreement by the Company was invalid or in excess of the powers of the Company.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (11) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the Power Purchase Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Company's rights, benefits, duties or obligations under the Power Purchase Agreement.

SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS. Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Company may have under the Power Purchase Agreement or under Applicable law (other than bankruptcy or insolvency of the Company and other than any defense which the Company has expressly waived in the Power Purchase Agreement or the Guarantor has expressly waived in Section 3.5 hereof or elsewhere hereunder). The obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or defenses which the Company is permitted to assert pursuant to the Power Purchase Agreement, if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR. The Guarantor hereby unconditionally and irrevocably waives:

- (1) notice from DWR of its acceptance of this Guaranty;
- (2) notice of any of the events referred to in Section 3.3 hereof, except to the extent that notice is required to be given as a condition to the enforcement of Obligations;
- (3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Company or the Guarantor required pursuant to the Power Purchase Agreement or this Guaranty or applicable as a condition to the performance of any Obligation;
- (4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;
- (5) any right to require a proceeding first against the Company;
- (6) any requirement that the Company be joined as a party to any proceeding for the enforcement of any term of the Power Purchase Agreement or this Guaranty;
- (7) the requirement of, or the notice of, the filing of claims by the DWR in the event of a receivership or bankruptcy of the Company; and

(8) except for demands of other formalities set forth in the Power Purchase Agreement or this Guaranty, all demands upon the Company or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES. The Guarantor agrees to pay DWR on demand all reasonable costs and expenses incurred by or on behalf of DWR in successfully enforcing by legal proceeding observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the costs and expenses that DWR incurs in performing any of its obligations under the Power Purchase Agreement.

SECTION 3.7. SUBORDINATION OF RIGHTS. The Guarantor agrees that any right of subrogation or contribution which it may have against the Company as a result of any payment or performance hereunder is hereby fully subordinated to the rights of DWR hereunder and under the Power Purchase Agreement. The Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT. The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall (1) to the extent permitted by Applicable law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty, (2) give rise to separate and independent causes of action against the Guarantor, and (3) apply irrespective of any indulgence granted from time to time by DWR. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Company is rescinded or must be otherwise restored by DWR, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding.

SECTION 3.9. TERM. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully paid and performed.

CONFIDENTIAL

ARTICLE IV

GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE.

(A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, unless the successor is the Guarantor and the conditions contained in clause (2) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if (1) the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of California, and (b) delivers to DWR an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws, and (2) any such transaction does not result in a reduction in the credit rating of the unsecured, long-term debt of the Guarantor.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section 4.1, the provisions of this Section 4.1 shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section 4.1. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section 4.1.

SECTION 4.2. ASSIGNMENT. Without the prior written consent of DWR, this Guaranty may not be assigned by the Guarantor, except pursuant to Section 4.1 hereof.

SECTION 4.3. QUALIFICATION IN CALIFORNIA. The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the State of California.

SECTION 4.4. CONSENT TO JURISDICTION. The Guarantor irrevocably: (1) agrees that any legal proceeding arising out of this Guaranty shall be brought in the State court in California having appropriate jurisdiction; (2) consents to the jurisdiction of such court in any such legal proceeding; (3) waives any objection which it may have to the laying of the jurisdiction of any such legal proceeding in any of such court; and (4) waives its right to a trial by jury in any legal proceeding in any of such court.

SECTION 4.5. BINDING EFFECT. This Guaranty shall inure to the benefit of DWR and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of DWR and of the Guarantor.

Primary Power Guaranty Agreement Version 4 3/9/01

CONFIDENTIAL

SECTION 4.7. LIABILITY. It is understood and agreed to by DWR that nothing contained herein shall create any obligation of or right to look to any director, officer, employee or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.8. NOTICES. All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or sent by first class mail and facsimile, to such addresses:

(a) If to the Guarantor: Primary Power International
168 East Center Street
Ithaca, Michigan 48847
Attn: Roger Silverthorn

with a copy to: Ufer & Spaniola, P.C.
39577 Woodward Avenue, Suite 210
Bloomfield Hills, Michigan 48304
Attn: Anthony M. Spaniola, Esq.

(b) If to DWR: California Department of Water Resources
1416 Ninth Street
Sacramento, California 95814
Attn: Contract Administration

Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent. Any notice hereunder signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee. Notices and communications given by mail hereunder shall be deemed to have been given 5 days after the date of dispatch; all other notices shall be deemed to have been given upon receipt.

CONFIDENTIAL

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

PRIMARY POWER MANAGEMENT AND
DEVELOPMENT, INC., a Michigan corporation,
d/b/a Primary Power International.,

By:

Printed Name:

Title:

Accepted and Agreed to by:

"California Department of Water Resources, acting solely under the authority and powers created by ABX-1, codified as Sections 80000 through 80260 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System" or "Party B".

By:

Printed Name: *THOMAS M. HANNIGAN*

Title: *DIRECTOR*

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IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

PRIMARY POWER MANAGEMENT AND
DEVELOPMENT, INC., a Michigan corporation,
d/b/a Primary Power International,

By:

Printed Name:

Title:

Rog Still

Roger Silvestro

President

Accepted and Agreed to by:

"California Department of Water Resources, acting solely under the authority and powers created by ABX-1, codified as Sections 80000 through 80260 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System" or "Party B".

By:

Printed Name:

Title:

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